

UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF NEW YORK

Ralph Nolan (71309-054)

Petitioner/Defendant.

Civil No.

-against-

16 CV 7831

United States of America,

Respondent.

APPENDIX

**IN SUPPORT OF A MOTION PURSUANT TO 28 U.S.C. §2255 TO VACATE, SET
ASIDE OR CORRECT A SENTENCE BY A PERSON IN FEDERAL CUSTODY**

October 2016

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SUSAN J. WALSH, Esq. under penalty of perjury, affirms and states as follows: I am a member of Vladeck Raskin & Clark, P.C., attorneys for defendant/petitioner Ralph Nolan ("Defendant" or "Nolan"). I submit this declaration in support of Nolan's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, or His Sentence:

1. Attached as Exhibit 1 is a true and accurate copy of October 9, 2015 letter by trial counsel, Mitchell Dinnerstein, filed and Docketed with the Court.

2. Attached as Exhibit 2 is a true and accurate copy of the Criminal Complaint filed under 14 Mag 1639 on July 28, 2014.

3. Attached as Exhibit 3 is a true and accurate copy of Government Trial Exhibit 501, a Facebook photograph of defendant petitioner admitted at trial in 14 Cr 555 (GBD).

4. Attached as Exhibit 4 is a true and accurate copy of the transcript of proceedings in United States v. Ralph Nolan, 14 CR 555 (GBD) on April 1, 2014 and docketed as No. 62. Attached as **Exhibit 4a** is a true and accurate copy of a letter by trial counsel dated March 19, 2014 and docketed as No. 16, requesting admission of the entirety of defendant's post-arrest statement.

5. Attached as Exhibit 5 is a true and accurate copy of the Petition and Disposition from the Bronx Family Court In the Matter of Ralph Nolan, Docket No. 18754/04 and filed on August 26, 2004.

6. Attached as Exhibit 6 is a true and accurate copy of a notarized statement by Joseph Nolan, dated June 15, 2016.

7. Attached as Exhibit 7 is a true and accurate copy of the Government's Motion in Limine filed in the trial of United States v. Ralph Nolan, 14 Cr 555(GBD) on March 27, 2015 and docketed as No. 25.

8. Attached as Exhibit 8 is a true and accurate copy of an electronic letter sent by the Government to trial counsel on or about March 10, 2015 outlining evidence pursuant to Fed. R. 404(b).

9. Attached as Exhibit 9 is a true and accurate copy of an electronic letter sent by the Government to trial counsel dated March 26, 2014 disclosing that a witness present at the robbery viewed a photo array which included Ralph Nolan's photo and did not identify anyone in the array and that "none of the individuals depicted in the photo array looked like the robbers because the robbers looked "Spanish."

10. Attached as part of Exhibit 10 is an affidavit by a licensed private investigator attesting to the transmittal of a recorded interview of Robert Jackson and Lorraine Scroggins conducted on February 3, 2015 to Owen Forensic Services. (A copy of the enhanced audio recording is available with defense counsel).

11. Attached as Exhibit 11, is a Motion to Preclude Identification evidence filed by trial counsel on or about April 5, 2015 and docketed as No. 40.

12. Attached as Exhibit 12 is a true and accurate copy of a redacted "Complaint Follow-up Report" numbered 75 and disclosed to the defense trial counsel on or about March 3, 2015.

13. Attached as Exhibit 13 is a true and accurate copy of Government Exhibit 200 admitted at the trial of United States v. Ralph Nolan, 14 Cr 555 (GBD).

14. Attached as Exhibit 14 is a true and accurate copy of 3500 material related to the interview of Government Witness Desiree Scroggins dated April 3, 2015 (3503-16).

15. Attached as Exhibit 15 is a true and accurate copy of a letter by from the Government to trial counsel dated April 6, 2015 indicating that Desiree Scroggins advised that the same day she identified a photograph of Ralph Nolan she showed the Facebook page of Ralph Nolan to Sandra Martinez.

16. Attached as Exhibit 16 is a true and accurate copy the pages 1, 23 – 25, of the Opinion and Order of Hon. Lorna G. Schofield, USDJ in the matter of *United States v. Antoine Chambers*, 13 Cr 345 (LGS) denying the Government's Motion to "modify" its prior ruling regarding the court's adverse credibility finding as to the testimony of NYPD Detective Ellis Deloren filed on ECF July 9, 2015 Document No. 236.

17. Attached as Exhibit 17 is a true and accurate copy of the Government's demand of written notice of alibi pursuant to Fed. R. Crim. P. 12.1(a) in the matter of United States v. Nolan, 14 Cr 555 (GBD) and dated March 18, 2015.

18. Attached as Exhibit 18 is a true and accurate copy of 3500 material reflecting email communications between the Government and Detective Deloren, dated April 2, 2015 and numbered 3509-09.

19. Attached as Exhibit 19 is a true and accurate copy of letter by the Government to trial counsel dated March 31, 2015 disclosing information concerning the disclosure of the defendant's name and his Facebook to Government witnesses.

20. Attached as Exhibit 20 is a true and accurate copy of a Complaint Follow-up report disclosed as 3500 material concerning the description provided by Desiree Scroggins of the two perpetrators of the robbery on December 16, 2013 and numbered Scroggins 3503-01.

21. Attached as Exhibit 21 is a true and accurate copy of a 3500 material concerning Report of Investigation authored by Agent Winston recording information received on January 30, 2014r from NYPD Det. Deloren regarding disclosures made by the victims concerning marijuana and a "tentative" identification numbered WINSTON 3502-1.

22. Attached as Exhibit 22 is a true and accurate copy of 3500 material concerning the "re-interview" of Sandra Martinez dated January 23, 2104 and containing a description of the robbers numbered DELOREN 3509-07.

23. Attached as Exhibit 23 is a true and accurate copy of Defendant's Trial Exhibit C, admitted in evidence, a Wanted Poster of "INFORMATION NEEDED" prepared by NYPD Detective Deloren describing the "2 male, Hispanics, armed with firearms" wanted for the 12/16/13 robbery in the matter of United States v. Nolan, 14 Cr 555 (GBD) and numbered with 3500 number DELOREN 3509-01.

24. Attached as Exhibit 24 is a true and accurate copy of the SPRINT Report of the December 16, 203 emergency 911 call disclosed by the Government in the discovery of this robbery prosecution and Bates Numbered 0090.

25. Attached as Exhibit 25 is a true and accurate copy of 3500 material reflecting the interview of Desiree Scroggins describing the robbers as American Puerto Rican, light skinned 6 ")" med light eyes, skully and Light Skin 5'2" med heavy, ski masked and numbered SCROGGINS 3503-10.

26. Attached as Exhibit 26 is a true and accurate copy of 3500 material of a complaint follow-up report describing Lorraine Scroggins as a female, black and numbered SCROGGINS 3501-01.

27. Attaches as Exhibit 27 is a true and accurate copy of 3500 material of Christopher Martinez criminal record which describes him as Male White Hispanic Dark and contains a photo of him numbered MARTINEZ 3505-10.

28. Attached as Exhibit 28 is a true and accurate copy of 3500 material of Sandra Martinez criminal record which describes her as Female, Hispanic, Light and contains a photo of her numbered MARTINEZ 3506-09.

29. Attached as Exhibit 29 is a true and accurate copy of a sworn declaration by trial counsel Mitchell Dinnerstein dated February 9, 2016.

30. Attached as Exhibit 30 is a true and accurate copy of the Memorandum of Law filed by trial counsel in support of post-trial motions and docketed as No. 70 in *United States v. Nolan*, 14 Cr 555 (GBD).

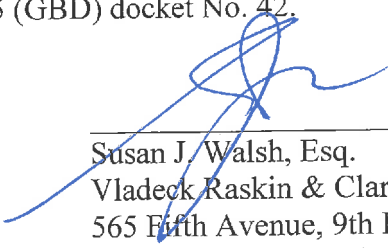
31. Attached as Exhibit 31 is a true and accurate copy of the Opinion of the Hon. George B. Daniels, denying the defense post-trial motions filed August 11, 2015 and docketed as No. 80 in *United States v. Nolan*, 14 Cr 555 (GBD).

32. Attached as Exhibit 32 is a true and accurate copy of the Expert Report written by Dr. Steven Penrod Distinguished Professor of Psychology at the John Jay College of Criminal Justice of the City University of New York.

33. Attached as Exhibit 33 is a true and accurate copy of the Order of the Hon. Lorna G. Schofield, District Judge in the matter of *United States v. Brown, (Antoine Chambers) et. al.*, 13 Cr. 345 (LGS) *inter alia* granting Defendant Antoine Chambers Second Motion in Limine to introduce expert testimony regarding the reliability of eyewitness testimony, filed December 4, 2014 and docket No. 203.

34. Attached as Exhibit 34 is a true and accurate copy of the trial transcript in the matter of *United States v. Chambers*, 13 CR. 345 (LGS) provided as 3500 material in *United States v. Nolan*, 14 Cr 555 (GBD) and numbered DELOREN 3509-10, pp 700- 712 and including the trial court's decision to strike identification testimony and the court's findings regarding the lack of credibility of Detective Deloren's accounts, at pp. 703 -705.

35. Attached as Exhibit 35 is a true and accurate copy of the Government's Response in Opposition to trial counsel's motion to preclude identification evidence, dated April 5, 2013 and filed in *United States v. Nolan*, 14 Cr 555 (GBD) docket No. 42.



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